(3)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition NO. 2172 /2003

PETITIONER : Brahma Prasad, aged 68 years S/o. Lakheshwar , Patel, R/o. Village Chapple, Tahsil Kharsiya, District Raigarh (C.G.)

P. R. No. 3694/03
Presented by Shri S. P. Sahu
dated 21.02.03

VERSUS

RESPONDENTS : 1. The State of Chhattisgarh Through The Collector, Raigarh (C.G.)

2. Chhatrapal Singh, aged 39 years S/o. Devprasad Patel, R/o. Chapple, Tah. Kharsiya, District. Raigarh (C.G.)

3. Sanjay Kumar , aged 33 years S/o. Omprakash Gupta R/o. Kharsiya, Tahsil Kharsiya Distt. Raigarh (C.G.)

RECEIVED COPY
21/2/03
CLERK TO A.G. BILASPUR

WRIT PETITION U/A 226/227 OF THE CONSTITUTION OF INDIA

XI-HC-22

(27)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक WP 2172/03 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	8-8-2003 Miss Preeti Beriwal, counsel for the petitioner. Shri Sanjay Agrawal, Deputy Advocate General for the State. The petitioner by this petition filed under Article 226/227 of the Constitution of India has challenged the order dated 30-4-2003 passed by the Member, Board of Revenue, State of Chhattisgarh, Bilaspur, by which the learned Member of the Board of Revenue upheld the order of the District Collector, Raigarh dated 25-2-2003 cancelling the patta of allotment made in favour of the petitioner on 16-5-1974. The admitted facts are that the petitioner was allotted a piece of land measuring 0.607 hectare and Bhoomiswami Patta was granted to him on 16-5-1974. On 25-4-1989 the petitioner had sold 0.040 hectare of land in favour of Sanjay Kumar (respondent No.3) by way of sale deed	

XI-HC-22 (23)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

WP 2172/03

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

without taking prior permission of the Collector. On complaint made by one Chhatrapal an enquiry was conducted by the Sub Divisional Officer and the matter was reported to the Collector. The Collector instituted a case and opportunity was given to parties and after hearing the parties the Collector reached to the conclusion that the land in question has been transferred without prior permission of the Collector in contravention of the provisions of Section 165 (7) (b) of Chhattisgarh Land Revenue Act, 1959 and accordingly, the Collector cancelled the Patta and allotment of the petitioner.

I have heard learned counsel for the petitioner.

Learned counsel for the petitioner submitted that as per the provisions of Section 158 (3) of the Land Revenue Act after ten years from the date of issuance of the patta, Bhoomiswami is entitled for transfer of the land without permission of the Collector. She further submitted that the Collector should have

(24)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक WP 2174/08 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

cancelled the allotment to the extent of the land, which has been transferred by the petitioner to respondent No.3. She also submitted that petitioner has already constructed a house on the land allotted to him and if he is removed from that land it will create difficult situation for him.

I have perused the relevant provisions of Section 158 (3) alongwith Section 165 (7) (b) of the Land Revenue Act, 1959. Even though the proviso to sub-section (3) of Section 158 prescribed that "*no such person shall transfer such land within a period of ten years from the date of lease or allotment*". However, later on the provisions of sub-section 7 (b) of Section 165 was ~~incorporated~~ inserted and which lays down that "*notwithstanding anything contained in sub-section (a person who holds land from the State Government or a person who holds land in Bhoomiswami rights under sub-section (3) of Section 158) or whom right to occupy land is granted by the State Government or the Collector*

(28) उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक WP 2172/03 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 5 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

of the patta, which is in possession of the petitioner and a house has been constructed by him on that land should not have been cancelled. The provision of sub-section 7 (b) of Section 165 does not laid down that the only portion, which has been transferred without the permission of the Collector, should be cancelled. This provision lays down about the cancellation of the patta.

As such there is no force in the contention of the learned counsel for the petitioner, as far as the house and other things are concerned which are constructed by the petitioner and are existing on the patta land, it is for the competent authority to decide this question, as to what relief can be granted to the petitioner in this respect and the petitioner is at liberty to move the appropriate authority in this regard.

This writ petition is disposed of accordingly.

In view of the above order, M.(W).P.No.1961/2003 and I.A.No.6639/2003 stands disposed of.

Sd/-
L.C. Bhadoo
Judge

gowri/-

18-8-03
6/8/03